

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PNC BANK, National Association,

Plaintiff,

v.

NEUBERGER BERMAN, LLC,

Defendant.

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Electronically Filed

Civil Action No.: 2:09-cv-245-TFM

Judge Terrence F. McVerry

ANSWER & AFFIRMATIVE DEFENSES OF NEUBERGER BERMAN, LLC

Defendant, Neuberger Berman, LLC (“Neuberger Berman”), files this Answer and Affirmative Defenses to the Complaint of Plaintiff, PNC Bank, National Association (“PNC”):

1. Neuberger Berman denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.

2. The allegations contained in paragraph 2 of the Complaint state a legal conclusion to which an admission or denial is not required, but to the extent one is required Neuberger Berman denies the allegations, except admits that Neuberger Berman is a Delaware limited liability company with a main office address of 605 3rd Ave New York, New York.

3. The allegations contained in paragraph 3 of the Complaint state a legal conclusion to which an admission or denial is not required.

4. The allegations contained in paragraph 4 of the Complaint state a legal conclusion to which an admission or denial is not required.

5. Neuberger Berman denies the allegations contained in paragraph 5 of the Complaint and refers the Court to the Agreement for its terms.

6. Neuberger Berman denies the allegations contained in paragraph 6 of the Complaint and refers the Court to the Agreement for its terms.

7. Neuberger Berman denies the allegations contained in paragraph 7 of the Complaint and refers the Court to the Agreement for its terms.

8. Neuberger Berman denies the allegations contained in paragraph 8 of the Complaint, except admits that Neuberger Berman did not deliver USD 40,273,200 to PNC on February 11, 2009.

9. Neuberger Berman denies the allegations contained in paragraph 9 of the Complaint and refers the Court to the Agreement and correspondence for their terms.

10. Neuberger Berman denies the allegations contained in paragraph 10 of the Complaint.

COUNT I
Breach of Contract

11. As its response to paragraph 11 of the Complaint, Neuberger Berman repeats and realleges by reference its response to paragraphs 1 through and including 10 of the Complaint as if fully set forth herein.

12. Neuberger Berman denies the allegations contained in paragraph 12 of the Complaint.

13. Neuberger Berman denies the allegations contained in paragraph 13 of the Complaint.

14. Neuberger Berman denies the allegations contained in paragraph 14 of the Complaint.

COUNT II
Specific Performance

15. As its response to paragraph 15 of the Complaint, Neuberger Berman repeats and realleges by reference its response to paragraphs 1 through and including 14 of the Complaint as if fully set forth herein.

16. Neuberger Berman denies the allegations contained in paragraph 16 of the Complaint.

17. Neuberger Berman denies the allegations contained in paragraph 17 of the Complaint.

18. Neuberger Berman denies the allegations contained in paragraph 18 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are subject to dismissal because it has failed to join an indispensable party, namely Lehman Brothers Commercial Corp or Lehman Brothers Inc.

WHEREFORE, Neuberger Berman respectfully requests that the Court:

- (a) deny all of plaintiff's claims and dismiss the complaint against Neuberger Berman with prejudice;
- (b) award Neuberger Berman its costs, reasonable attorneys' fees and disbursements in this action; and
- (c) grant such other and further relief as this Court deems just.

Dated: April 7, 2009

Respectfully submitted,

Goldsmith & Ogrodowski, LLC

s/ Russell D. Giancola
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CERTIFICATE OF SERVICE

I certify that I have served the foregoing upon all known counsel of record in the manner indicated below on April 7, 2009, as follows:

Stanley Yorsz, Esquire
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VIA CM/ECF

s/ Russell D. Giancola
Russell D. Giancola